Committee on Resources

Witness Statement

TESTIMONY OF
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ALASKA FEDERATION OF NATIVES
U. S. HOUSE RESOURCES COMMITTEE
HEARING ON H.R.4345
June 14, 2000

Mr. Chairman, Honorable members of the U. S. House Resources Committee:

For the record, my name is Nelson N. Angapak, Sr., Vice President of the Alaska Federation of Natives. It is a privilege and honor to testify in front of your Committee.

On behalf of AFN, its Board of Directors and membership, thank you very much for inviting AFN to submit its statement to the Committee on H.R.4345.

AFN is a statewide Native organization formed in 1966 to represent Alaska's 100,000+ Eskimos, Indians and Aleuts on concerns and issues that affect the rights and property interests of the Alaska Natives on a statewide basis.

At the outset, I want to take this opportunity to thank the Chairman and the U. S. House Resources Committee for having worked with AFN and the Alaska Native Community during this millennium on issues of concern to us. During this millennium, the U. S. Congress passed historical legislation that benefited the Alaska Native Community. Some examples of such legislation include PL 92-203, the Alaska Native Claims Settlement Act, the Indian Child Welfare Act, the Indian Self-Determination Act, and Title VIII of the Alaska National Interest Lands Conservation Act.

Before I begin, some of the legal counsels of regional corporations are present in the audience. If the committee members ask specific questions that I may not be able to answer, and if it is permitted by the rules and guidelines of this committee, I would like those individuals to respond to such questions.

For the record, AFN supports H.R.4345 in its entirety. I would like to request that both my oral and written statements be incorporated into the record of this public hearing.

Please allow us to comment on this bill on a section-by-section basis.

Section 1. Short Title; Reference. AFN is in full agreement with this section.

Section 2. Relation to Civil Rights Act of 1964. The 1987 amendments to ANCSA created an exemption

for Alaska Native Corporations from Federal anti-discrimination laws related to employment. This exemption allows Alaska Native Corporations to implement a shareholder hiring preference without being subject to claims under the Civil Rights Act of 1964. Such a policy benefits Alaska Natives by providing increased employment opportunities in the communities in which Native Corporations conduct business.

The amendment in Section 2 of H.R.4345 would expand this exemption to cover contractors with which a Native Corporation engages in more than $20,000 worth of commercial transactions in a calendar year. Upon the enactment of the amendment set forth in Section 3, a contractor would, for the work done for the Native Corporation, be allowed to provide a hiring preference for Alaska Native Corporation shareholders without being subject to claims under the Civil Rights Act of 1964.

Section 3. Alaska Native Veterans. AFN would like to take this opportunity to thank Congress for passing PL 105-276, Section 41of which authorized Alaska Native veterans who served in active duty in U. S. Armed Forces from January 1, 1969 to December 31, 1971 to apply for Native Allotments pursuant to the Native Allotment Act of May 17, 1906. Under this legislation, approximately 1,110 Alaska Native veterans may become eligible to apply for Native Allotments if they meet certain criteria spelled out in PL 105-276. This Act, from our point of view, recognized, in part, the service in the U. S. Armed Forces that the Alaska Natives gave so unselfishly and so willingly to the United States of America in times of military conflicts, peaceful or otherwise. The July 10, 1999 issue of Houston Chronicle's Parade Section, on page 7, confirmed that the American Indians and Alaska Natives "have the highest record of service" in the military on a per capita basis of any ethnic group in the U. S.

Section 3 of H.R.4345 amends PL 105-276 by:

1. Opening up the qualifying dates to the entire Vietnam Era covering August 5, 1964 to May 7, 1975.

2. Expanding the number of decedents whose heirs may claim Native Allotments beyond what is allowed in PL 105-276. PL 105-276 allows the personal estate of an Alaska Native who was killed in military action, who died of battlefield related wounds as determined by the Department of Veterans' Affairs, or who died as a prisoner of war during the Vietnam Era conflict, to select a Native Allotment. This section would be amended to allow the personal estate of a veteran who died of other causes, after coming back from Vietnam, to apply for a Native Allotment for such veteran. Some of the veterans suffered post traumatic stress syndrome as a direct result of the Vietnam War and never recovered from PTSS, suffering as long as they were alive. These veterans must not be forgotten.

3. Extending the legislative approval provisions of ANILCA to the Native Allotment applications of Alaska Native veterans unless protests were lodged. If protests were lodged against the Native Allotment applications of the Alaska Native veterans, they would then be adjudicated through the ordinary adjudication as allowed by the rules and regulations governing this process.

If this section is enacted into law, approximately 1,174 additional Alaska Native veterans may become eligible to apply for Native Allotments.

We realize that the Department of the Interior has concerns over this section but we hope that this committee will consider supporting it. Congress must demonstrate its support and appreciation of the Alaska Natives who served so valiantly in the U. S. Armed Forces, even to the point of sacrificing their lives for America's freedom, by affirmatively voting for this legislation.

Section 4. Applicability of National Refuge Restrictions. The preference of the Alaska Federation of Natives is a total repeal of §22(g) of ANCSA in its entirety. We believe that it has been misused, and even abused, by the Department of the Interior, and more specifically, the United States Fish and Wildlife Service. For instance, the U. S. Fish and Wildlife Service has used §22(g) to lessen the value of ANCSA lands to the detriment of the ANCSA corporations. The attached letter, dated January 21, 1986, from Robert E. Gilmore, Regional Director, Fish and Wildlife Service, to Tom C. Hoblet, President, Isanotski Corporation, is a proof of our position.

Reducing the value of lands owned by ANCSA Corporations impacted by a §22(g) covenant runs contrary to the Declaration of Policy of Congress that is found in Section 2 of ANCSA. Congress declared in §2(a) of ANCSA that there is a need for a "fair and just settlement of all claims by Natives and Native groups of Alaska…" and §2(b) continues… "settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives…"

On August 10, 1983, Calista Corporation and Cook Inlet Region, Inc., two ANCSA regional corporations, partnered with Sea Lion Corporation, an ANCSA village corporation, collectively referred to as CIRI Group, and executed a land trade with the Department of the Interior. Some of the lands offered by the CIRI Group were lands with §22(g) covenants on them. On the same day, the National Audubon Society and other environmental groups, along with the Bering Sea Fishermen's Association, filed a lawsuit against the Department of the Interior to nullify this land trade. §22(g) played a predominant role in this lawsuit.

When U. S. District Court Judge James M. Fitzgerald issued a decision in favor of the plaintiffs, §22(g) was quoted extensively in his decision. He ruled that §22(g) protects the land in question from incompatible development on lands which de facto become refuge lands. Thus, the Native Corporations have no rights of ownership of their lands that are impacted by §22(g) of ANCSA.

As you can see, §22(g) of ANCSA has worked against the best interests of the ANCSA Corporations and their shareholders. The actions taken by the U.S. Fish and Wildlife Service have reduced the value of ANCSA lands. This action is contrary to the Congressional findings. AFN and the ANCSA Corporations feel that Congress should repeal Section 22(g). This will allow the Native Corporations a greater role in the management of their lands.

As of 1995, the first round § 12(a) selections of 29 village corporations located within four regional corporations were impacted by §22(g) of ANCSA. This represented approximately 1,101,778 of the 44 million acres of ANCSA lands. This does not include § 12(b) lands, the second round selections, or lands that may have been purchased by the federal government using Exxon Oil Spill funds.

Section 5. Clarification of Liability for Contamination. AFN believes that Congress intended to provide Native Corporations with lands that would provide economic benefit to the Native Shareholders when it passed ANCSA on December 18, 1971. Some of the lands conveyed to Native Corporations were contaminated by the previous owner, the U.S. Government. It is our contention that ANCSA Corporations should not be held responsible for the contamination cleanup if contaminants were placed on those lands while they were owned or managed by the federal government. We feel that the federal government has the obligation to clean up those contaminated lands. Passage of Section 5 would accomplish that.

Section 6. Levies on Settlement Trust Interests. The settlement trust provision of ANCSA provides that assets placed in a settlement trust are not subject to any creditor action except by the creditors of the settlement trust itself. The law is unclear whether the beneficiary's interests in the trust can be subject to

attachment, etc., by their creditors. The legislative history from the 1988 amendments specifically indicates that a "spendthrift clause" could be included in the trust agreement for a settlement trust, but does not specify what the scope of such a provision could be. Normally, under general trust law, a spendthrift clause operates to limit the circumstances in which creditors can reach a beneficiary's trust interest. Alaska law (A.S. 34.40.110) expressly recognizes the validity of a spendthrift clause for trusts established on or after April 2, 1997, but does not expressly authorize a spendthrift clause for trusts established prior to this date.

All this uncertainty places the Trustees in a difficult legal position under present law in deciding whether to honor creditor levies against beneficiary interests in a settlement trust. The Trustees have a fiduciary duty to protect the beneficiaries' rights, but are also required to honor creditor actions if those are valid under applicable law. At least one court case is now pending before the United States District Court for Alaska to determine whether the trustees of a settlement trust must honor a levy by the State of Alaska with regard to various beneficiaries' unpaid child support obligations.

By contrast, since 1971 section 7(h) of ANCSA has clearly restricted most creditor actions as to Native Corporation stock. Creditors are prohibited from levies and other similar actions against Settlement Common Stock, except to the extent that a court has authorized creditor action with regard to unpaid child support. Thus, child support levies are valid against Settlement Common Stock as long as a court has previously authorized such actions.

The proposed provision removes the uncertainty of levies against the beneficial interests in a settlement trust by clarifying that such levies and other creditor actions may occur in the same circumstances that such levies and actions could occur with regard to the stock in a Native Corporation. This confirms the trust principles to a procedure already known to the personnel within Native Corporations (who often provide the day to day administration of the trusts), but it also follows logically because the Native Corporation was the source of the settlement trust assets.

Thank you for giving us an opportunity to give this testimony. We hope you will consider these proposed amendments affirmatively.

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